

basis for marketing penalty computations for the farm for the current marketing year only if the county committee determines and the State Executive Director concurs that:

(a) *Extent of error.* The error was not so substantial as to place the operator on notice that such notice of quota was incorrect; and

(b) *Response to notice.* The operator, relying upon such notice and acting in good faith:

(1) Has made plans, or is engaged in activities, to produce the quota in the amount set forth on the erroneous notice (for example, land preparation; purchase of seed, fertilizer, and other production materials; or reducing the acreage of other crops); or

(2) Has planted the acreage of peanuts needed to produce the erroneous farm poundage quota.

[61 FR 37000, July 16, 1996]

§ 729.214 Transfer of quota by sale, lease, owner, or operator.

Peanut quota may be transferred between eligible farms, or between separately owned tracts within a farm, in accordance with the provisions of this section.

(a) *Basis of transfers.* A transfer of quota may be either permanent or temporary to the extent provided for in this section.

(1) *Permanent.* A permanent transfer shall be based on a part or all of the farm's basic quota. The maximum quota that may be permanently transferred from a farm in the current year is the farm's basic quota. A permanent transfer may be by:

(i) *Sale.* The sale of a farm's basic quota.

(ii) *Owner.* The owner transferring basic quota between two farms when such farms have identical ownership as determined by FSA under instructions of the Deputy Administrator.

(2) *Temporary.* A temporary transfer is for one year and shall be based on a part or all of the farm's effective quota. The maximum quota that may be temporarily transferred from a farm in the current year is the farm's effective quota. A temporary transfer, to the extent permitted by this section, may be by:

(i) *Lease.* The lease and transfer of a farm's effective quota.

(ii) *Owner.* The owner transferring effective quota to another farm owned or operated by such owner.

(iii) *Operator.* The operator transferring effective quota to another farm owned or operated by such operator.

(b) *Transfer agreement.* In order to transfer poundage quota in the current year between two eligible farms, the transfer agreement must be:

(1) *Form.* Recorded on Form FSA-375.

(2) *Where to file.* Filed in the county FSA office which serves the county in which the transferring farm is located for administrative purposes.

(3) *Signatures.* Agreed upon and signed by:

(i) *Sale or lease.* In the case of a sale or lease, the owner(s) and operator of the transferring farm and the owner(s) or operator of the receiving farm. However, if a lease is filed after July 31 by a farm operator who cash leased the farm the signature of the owner(s) of such farm is not required.

(ii) *Owner transfer.* In the case of an owner transfer, the owner of the transferring farm who also must be the owner or operator of the receiving farm.

(iii) *Operator transfer.* In the case of an operator transfer, the operator of the transferring farm who also must be the owner or operator of the receiving farm.

(iv) *Lienholder.* In all cases, any person who holds a mortgage or other lien against the transferring farm.

(4) *Witness.* Signed on Form FSA-375, by each person whose signature is required by paragraph (b)(3) of this section, in the presence of a State or county committee member or an FSA employee who shall sign Form FSA-375 as a witness. If such signatures cannot be witnessed in the county FSA office where the farm is administratively located, they may be witnessed in any State or county FSA office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers that are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced may be waived provided the county FSA office mails

Form FSA-375 for the required signatures.

(5) *When to file.* Filed at any time after all required signatures have been recorded.

(i) *Permanent transfer.* If filed:

(A) Before August 1, the transfer shall be effective for the current year.

(B) After July 31, the transfer agreement shall not be approved until the next year's quota is determined for the transferring farm.

(ii) *Temporary transfer.* If filed after July 31 and before February 1, the transfer agreement shall not be approved unless both the transferring farm and the receiving farm meet applicable provisions in paragraph (f) of this section that apply to transfers filed during such period.

(c) *Location of farms.* In order to transfer poundage quota between two farms, such farms must be located within the same State and, to the extent required by paragraph (d) of this section, in the same county. It is not necessary for the receiving farm to have had a basic quota in the current or prior year, except as provided in paragraph (d)(4) of this section.

(d) *Limitations on transfer by sale or lease.* Subject to the provisions of paragraph (m) of this section:

(1) *States with less than 10,000 tons of quota.* With respect to farms in any State for which the State's poundage quota for the year preceding the current year was less than 10,000 tons, transfers of peanut quota by sale or lease may be made to any other farm in any county within the State.

(2) *States with 10,000 tons or more of quota.* For farms in States with 10,000 tons or more of quota:

(i) Poundage quota may be transferred to any other farm within the same county.

(ii) If the farm is in a county with less than a total of 50 tons of quota, the poundage quota may be transferred to any other farm within the same State without regard to the limitations set forth in paragraph (d)(2)(iii) of this section.

(iii) If the farm is in a county with a total of 50 tons or more of quota, poundage quota transferred out of county shall be limited to 40 percent of the quota in the transferring county as

of January 1, 1996. Further, the cumulative unexpired out-of-county transfers for a crop year may not exceed the following percentages of the quota in the transferring county as of January 1, 1996:

(A) 15 percent for the 1996 crop;

(B) 25 percent for the 1997 crop;

(C) 30 percent for the 1998 crop;

(D) 35 percent for the 1999 crop; and

(E) 40 percent for the 2000 and subsequent crops.

(iv) *Selecting approved transfers.* For purposes of administering the limitations on the amount of transfers, the Director shall establish a method for selecting, by lot or other method, those applications which are to be approved. The Director may give preference to permanent transfers.

(3) *Fall transfers.* The limitations in paragraph (d)(2)(iii) of this section do not apply to 1-year fall transfers, which may, in all cases, be made to any farm in the same State, subject to such restrictions as otherwise apply for fall transfers.

(4) *Owner or operator transfer.* Owner or operator transfers of poundage quota are permitted to contiguous counties within the same State without regard to the percentage limitations of paragraph (d)(2)(iii) of this section; provided that, the receiving farm had a basic quota established for the preceding year's crop and has the same owner, in an owner transfer, or the same operator, in an operator transfer.

(e) *Transfers to and from the same farm (subleasing)*—

(1) *Transfer agreement filed after January 31 and before August 1.* The county committee shall not approve a transfer agreement which is filed after January 31 of any year and before August 1 of the same year, if the approval would result in a temporary transfer both to and from either the transferring or receiving farm during such period, except that such transfer agreement may be approved if the farm that otherwise would be eligible to transfer or receive such quota resulted from a farm reconstitution that was approved subsequent to a transfer of quota.

(2) *Record of transfer filed after July 31 and before February 1.* The county committee shall not approve a temporary

transfer of effective quota if the transfer agreement is filed after July 31 of any year and before February 1 of the following year and approval would result in a temporary transfer both to and from either the receiving farm or transferring farm during such period.

(f) *Other transfer provisions*—(1) *Temporary transfer of quota from a farm.* A temporary transfer of quota from a farm by lease, owner, or operator shall not be approved:

(i) *Effective quota includes reapportioned quota.* If the transfer agreement was filed before August 1 of a crop year and the effective quota for the farm includes temporarily reapportioned quota from quota released from other farms of that crop year.

(ii) *Peanut poundage quota penalty.* If any person whose signature is required to perfect the transfer is known to owe a peanut poundage quota penalty. However, this provision shall not apply if the penalty is paid or, in the case of a transfer by lease, the entire proceeds of the lease are applied to the penalty and the county committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(iii) *Filed after July 31 and before February 1 ("Fall transfers").* If filed after July 31 of the crop year and before February 1 of the following year, unless:

(A) The reported or determined acreage of peanuts plus prevented planted credit for the transferring farm for the current year, when multiplied by the larger of the farm yield or the highest actual yield during the base period, is equal to or greater than 90 percent of the farm's effective quota prior to adjustment for temporary seed quota allocated to the farm;

(B) The county committee determines that the producers on the farm made a good faith effort to produce a normal crop of peanuts on the acreage devoted to peanuts.

(C) The quantity to be transferred does not exceed the quota balance remaining on the farm's marketing card(s); and

(D) For a lessee, such lessee provides satisfactory evidence that the lease is a cash lease or the owner signs the transfer agreement.

(2) *Temporary transfer of quota to a farm.* A temporary transfer of quota to a farm by lease, owner, or operator shall not be approved:

(i) *Tillable cropland limitation.* If the transfer agreement was filed before August 1 of the crop year and the effective quota after the transfer would exceed an amount determined by multiplying the acreage of tillable cropland on the farm by the larger of the farm yield or the highest actual yield per acre during the base period.

(ii) *Filed after July 31 and before February 1.* If the transfer agreement is filed after July 31 of the crop year and before February 1 of the following year unless the quantity being transferred:

(A) Is needed in order to market all eligible peanuts from the receiving farm as quota peanuts, and

(B) Does not exceed an amount by which the receiving farm's effective quota before the transfer is less than the entire production of peanuts from the farm exclusive of any peanuts that have been graded as Segregation 2 or Segregation 3 peanuts.

(3) *Permanent transfer of quota from a farm.* A permanent transfer of quota from a farm by sale or by owner shall not be approved:

(i) *Permanent transfer of quota by sale to the farm.* For the amount of quota purchased and permanently transferred to the farm in the current year and during the base period, as adjusted for any increase or decrease in such quota due to adjustment in the national quota during the base period, except that a transfer of a tenant's share of any peanut quota increase shall not be considered for purposes of determinations made under the provisions of this paragraph.

(ii) *Peanut poundage quota penalty.* If the owner is known to owe a peanut poundage quota penalty. However, this provision shall not apply if the penalty is paid, or in the case of a sale of quota, the entire proceeds from the sale of quota are applied to the penalty and the county committee determines that the amount paid for the quota represents a reasonable price for the pounds of quota being sold.

(iii) *Conservation Reserve contract.* If the peanut quota is subject to an approved Conservation Reserve Program contract.

(4) *Permanent transfer of quota to a farm.* A permanent transfer of quota to a farm by sale or by owner shall not be approved if the basic quota after transfer would exceed an amount determined by multiplying the acreage of tillable cropland on the farm by the larger of the farm yield or the highest actual yield per acre during the base period.

(g) *Approval or disapproval of a transfer agreement.* The county committee shall approve or disapprove each transfer agreement. The county committee shall approve each transfer agreement which meets the eligibility conditions as set forth in this section or in this part. However, the county committee may delegate authority to the county executive director or other county FSA employee to act on behalf of the county committee and approve a transfer agreement which meets the eligibility conditions as set forth in this section. Such delegation may authorize the approval of any eligible transfer agreement or the delegation of authority may be restrictive as to the type of transfer agreements that may be approved. Only the county committee shall disapprove a transfer agreement.

(1) *Time for determination.* Any approval or disapproval of a transfer agreement should be made within 30 days after the transfer agreement is filed with the county committee unless additional time is required as the result of conditions beyond the control of the county committee. However, if a transfer agreement is filed after July 31 of the crop year that provides for a permanent transfer of poundage quota, the transfer agreement shall not be approved until the next year's quota is determined for the transferring farm.

(2) *Effective date.* An approved transfer agreement shall become effective during the current crop year, except that if an agreement to permanently transfer quota is filed after July 31 of the crop year, such agreement shall become effective for the next crop year.

(h) *Effect of permanent transfer of quota.* In the event of a permanent transfer of a quota, applicable farm

data for each year of the base period shall be transferred to the receiving farm from the transferring farm in proportion to the quantity of basic quota which has been transferred from the transferring farm.

(i) *Notice of revised quotas.* A revised notice of farm poundage quota shall be issued for each farm affected by the transfer of farm poundage quota.

(j) *Cancellation of transfer—*(1) A transfer approved on the basis of incorrect information furnished by the parties to the transfer agreement, or approved due to error by the county committee, shall be void and canceled effective as of the date of approval except as may be provided by the Deputy Administrator to accomplish the purposes of this part. The cancellation shall not be effective for the current marketing year if:

(i) The transfer approval was made on the basis of incorrect information unknowingly furnished in good faith by the parties to the transfer agreement or the transfer approval was made in error by the county committee, and

(ii) The parties to the transfer agreement were not notified of the cancellation prior to the marketing of quota peanuts in excess of the revised effective farm poundage quota.

(2) If cancellation of a transfer is required, the county committee shall issue revised notices of poundage quota showing the reasons for, and effect of, the cancellation.

(k) *Withdrawal or minor revision.* The county committee may permit withdrawal or minor revisions of a transfer upon a:

(1) Written request by all parties to the transfer, and

(2) County committee determination that such withdrawal or revision is clearly in the best interest of all the producers and will not impair the effective operation of the peanut program.

(l) *Adjustment of marketings.* For the purpose of computing production history for quota increase based on production, in the case of temporary transfers by owner to the same owner or operator to the same operator, if the current year's produced or considered-produced credit from the receiving farm exceeds such farm's basic quota, such produced or considered-produced

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credit on the receiving farm shall be reduced by the amount of such excess, to the extent of the quota temporarily transferred to such farm by owner or operator, and such reduced amount shall be added to the current year produced or considered-produced credit for the transferring farm.

(m) *Considered produced credit.* Quota that is leased and transferred from a farm shall be considered produced on such farm to the extent of considered produced credit set forth in the definition of “Considered produced credit” in § 729.103 of this part.

[56 FR 16211, Apr. 19, 1991, as amended at 57 FR 27144, June 18, 1992. Redesignated and amended at 61 FR 36999, 37001, July 16, 1996; 62 FR 2719, Jan. 17, 1997; 62 FR 25438, May 9, 1997; 65 FR 8247, Feb. 18, 2000]

§ 729.215 Release and reapportionment of quota.

(a) *Release.* By filing Form FSA–278 with the county FSA office that serves the county in which the farm is located for administrative purposes, part or all of the farm’s:

(1) *Temporary release.* Effective quota may be temporarily released to the county committee for the current year.

(2) *Permanent release.* Basic quota may be permanently released to the county committee. If the farm consists of separately identifiable tracts having different ownership, the owner(s) of any tract may permanently release part or all of the basic quota contributed to the farm by such tract.

(b) *Request for released quota.* Permanently released quota shall be reallocated without a request from the farm’s owner or operator to eligible farms as determined in accordance with § 729.204 of this part. Temporarily released quota, may be reapportioned to farms for which a request for released quota has been filed, on Form FSA–278, in the county FSA office that serves the county in which the farm is located for administrative purposes. Temporarily released quota shall be reapportioned in accordance with the provisions of this section.

(c) *Time for filing.* The final date for filing a release of quota or for requesting reapportionment of temporary released quota shall be:

(1) *Permanent release.* For quota to be permanently released, thirty days after the date of mailing of the notice of the farm’s quota.

(2) *Temporary release or request for released quota.* For a temporary release or a request for released quota, the date established by the State committee for the county in which the farm is located for administrative purposes.

(d) *Signature requirement.* The FSA–278 shall be signed by:

(1) *Temporary releases.* In the case of a temporary release, the farm operator. In addition, if quota was either leased and transferred from the farm, or released from the farm, in more than one year of the base period, the FSA–278 shall be signed by the farm’s owner(s).

(2) *Permanent releases.* In the case of a permanent release, both the owner(s) and operator of the farm.

(e) *Reapportionment of temporarily released quota—*(1) *Time to reapportion.* The county committee shall reapportion, within 10 days after the final date for temporary release of quota in the county, any quota that will be reapportioned to farms in the county. In addition, if the county committee receives released quota from the State committee, such quota shall be reapportioned within 10 days after receipt of the notice of the availability of the quota.

(2) *Basis of reapportionment.* The county committee:

(i) When reapportioning temporarily released quota, shall give priority to producers on nonquota farms and to producers on farms having basic quotas that are significantly below the average basic quota in the county. Otherwise, the county committee shall reapportion the released quota in amounts determined by the county committee to be fair and reasonable on the basis of:

(A) Experience by the applicant in producing peanuts;

(B) Soil and other physical factors affecting the production of peanuts on the applicant’s farm; and

(C) Tillable cropland available for the production of peanuts on the applicant’s farm.

(ii) Shall not reapportion released quota to a farm that has transferred